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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,702	02/02/2004	Lev Korzinov	16491-022001	1300
20985	7590	09/13/2006	EXAMINER	
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			BERTRAM, ERIC D	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/770,702	Applicant(s) KORZINOV ET AL.	
	Examiner Eric D. Bertram	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 20-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/14/04, 11/19/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, claims 13-19 in the reply filed on 9/6/2006 is acknowledged. The traversal is on several grounds, the first being that logic has been defied by contending that detecting a singular event (group I) or plural events (group II) in a cardiac signal warrants separate classification. This is not found persuasive because class 607/018, in which group II has been placed, is indeed for "plural sensed conditions" of a cardiac signal, in which group I cannot be placed since it does not receive multiple events in a cardiac signal.

2. The Applicant then states that the Restriction Requirement is based on the contention that the method of claim 13 (group II) has a separate utility of determining a sequential timing of cardiac events in a patient (see page 3, par. 1). This is simply not the case. Applicant is directed to the Restriction Requirement dated 8/31/2006, which states:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination as claimed does not require associating any event with a time span. The subcombination has separate utility such as determining the sequential timing of cardiac events in a patient.

3. As seen above, Group I has been classified as the subcombination, which has the separate utility such as determining a sequential timing of cardiac events in a patient. Since Group I associates the cardiac event with a time span, it would be fully

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capable - either by itself or in other combinations – of determining the sequential timing of singular cardiac events detected in multiple cardiac signals.

4. The Applicant further states that restriction is only proper if the inventions are independent and distinct, relying on MPEP 802.01. However, the Examiner respectfully requests that the Applicant reread MPEP 802.01, specifically the paragraph reproduced below:

*The term "independent" as already pointed out, means not dependent. A large number of inventions between which, prior to the 1952 Act, division had been proper, are dependent inventions, such as, for example, combination and a subcombination thereof; as process and apparatus used in the practice of the process; as composition and the process in which the composition is used; as process and the product made by such process, etc. If section 121 of the 1952 Act were intended to direct the Director never to approve division between dependent inventions, the word "independent" would clearly have been used alone. If the Director has authority or discretion to restrict independent inventions only, then restriction would be improper as between dependent inventions, e.g., the examples used for purpose of illustration above. Such was clearly not the intent of Congress. Nothing in the language of the statute and nothing in the hearings of the committees indicate any intent to change the substantive law on this subject. On the contrary, joinder of the term "distinct" with the term "independent", indicates lack of such intent. **The law has long been established that dependent inventions (frequently termed related inventions) such as used for illustration above may be properly divided if they are, in fact, "distinct" inventions, even though dependent.***

5. As stated above, the law has long been established that distinct inventions, even though dependent, may be properly restricted, and that "independent and distinct" is equivalent to "independent or distinct." In this case, the inventions are distinct for the reasons set forth in the Restriction Requirement dated 8/31/2006.

6. Finally, the Applicant is directed to MPEP 808.02, which states that burden on the Examiner is established if the inventions have attained separate classifications.

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Again, the Restriction Requirement from 8/31/2006 contains the separate classifications of the 3 distinct inventions.

The requirement is still deemed proper and is therefore made FINAL.

7. As a result, claims 1-12 and 20-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/6/2006.

Information Disclosure Statement

8. The information disclosure statements (IDS) submitted on 6/14/2004 and 11/19/2004 were filed in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hill et al. (US 2002/0107553, hereinafter Hill). Hill discloses a method for receiving and processing signals associated with cardiac events. Hill discloses sensing a cardiac biological signal that includes information describing events (par. 0037 and 0050, Col. 1). The merit of the events are determined based on a variety of parameters, including severity of the event and the rate of onset, which is a quality of the event (par. 0050,

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Col. 2). If one or more of the events are recognized by the system based on prior learning, then this "subset" of events has met a merit criterion based on the prior events, and a unique treatment is applied (par. 0050, Col. 2). It is the Examiner's position that these events are the "most meritorious" since they have been deemed worthy of receiving treatment. Furthermore, the events inherently occur within a "certain" or "predetermined" time span, even if that time span is the length of life of the device. Finally, the controller 104, which is located outside, or remote, of the body receives the detected events (par. 0037).

Conclusion

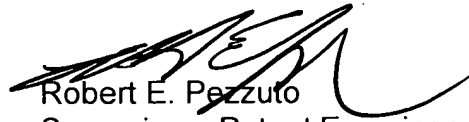
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Thursday and every other Friday from 9-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric D. Bertram
Examiner
Art Unit 3766



Robert E. Pezzuto
Supervisory Patent Examiner
Art Unit 3766

EDB